

Title 18, Public Revenue

Sales and Use Tax Regulation 1502, Computers, Programs, and Data Processing

FINAL STATEMENT OF REASONS

Overview/Non-Controlling Summary

Update

Regulation 1502 interprets and explains the Sales and Use Tax Law as it applies to sales of computers and computer programs, including data processing programs. It explains the situations where sales of such property are subject to sales and use tax and where they are not. There have not been any changes to applicable laws or the effect of the proposed amendments to Regulation 1502 described in the Notice of Proposed Regulatory Action. However, there is an additional legal basis for the Board of Equalization's adoption of the proposed amendments, as explained in the Updated Informative Digest.

Specific Purpose

The purpose of the proposed amendments is to interpret, implement, and make specific Revenue and Taxation Code section 6010.9 as it applies to sales and purchases of computer programs.

Necessity

The amendment is necessary to clarify the definition of "computer program" and the application of tax to sales and purchases of computer programs for taxpayers that engage in such transactions.

Factual Basis

Regulation 1502, Computers, Programs, and Data Processing, is proposed to be amended to interpret, implement, and make specific Revenue and Taxation Code section 6010.9. Regulation 1502, in part, provides definitions of various terms used in the regulation. Amendments are proposed to clarify the statutory definition of "computer program." Specifically, the regulatory amendments are necessary to: (1) clarify that: the statutory definition of "computer program" includes subdivisions such as routines and similar programming building blocks, as described in Revenue and Taxation Code section 6010.9, subdivision (c); and (2) further clarify that the term "program" in Regulation 1502 is consistent and in harmony with the definitional and related explanatory provisions pertaining to "computer programs" in Revenue and Taxation Code section 6010.9, subdivision (c), and "custom computer programs" and "existing prewritten programs" in Revenue and Taxation Code section 6010.9, subdivision (d).

The amendments delete the current language in Regulation 1502, subdivision (b)(10), defining "program" and replace it with new language clarifying the statutory definition of "computer program."

Local Mandate Determination

The Board has determined that the proposed amendments do not impose a mandate on local agencies or school districts. Further, the Board has determined that the amendments and regulations will result in no direct or indirect cost or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

Response to Public Comment

On March 16, 2009, the Board of Equalization held a public hearing on the proposed amendments to Regulation 1502. No one appeared at the public hearing and no written comments were received.

Small Business Impact

The State Board of Equalization has determined that the adoption of the amendments to Regulation 1502 will have no significant statewide adverse economic impact directly affecting small business. The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. The amendments to the regulation as proposed will not be detrimental to California business in competing with businesses in other states. The proposed regulation may affect small business.

Cost Impact on Private Persons or Business

The Board of Equalization is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the amended regulation.

Federal Regulations

Regulation 1502 and the proposed amendments have no comparable federal regulations.

Alternatives Considered

By its motion, the Board of Equalization determined no alternative to amending the regulation would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

Authority

Section 7051, Revenue and Taxation Code.

Reference

Section 6010.9, Revenue and Taxation Code.